

In propria persona

Creditor, Alameda County Tax Collector

1221 Oak Street, Room 131

Oakland, California 94612

Telephone: (510) 272-6800

Email: sheila.velasco@acgov.org

U.S. BANKRUPTCY COURT
F.D. 10

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JILL A. HANCOCK

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

D. Chen

In re:

BED BATH & BEYOND INC., et al.

Debtors,

Case No.: 23-13359 (VFP)

Chapter 11

Date: October 24, 2023

Time: 10:00 am (ET)

Courtroom: 3B

**DECLARATION OF MARY ANN ENRIQUEZ IN SUPPORT OF CREDITOR COUNTY
OF ALAMEDA TREASURER TAX COLLECTOR'S RESPONSE TO DEBTORS'
SECOND OMNIBUS OBJECTION**

I, Mary Ann Enriquez, to declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters, I believe them to be true, and if called upon to testify herein, I could and would competently testify as follows:
2. I am employed by the County of Alameda ("County"). I have been employed by the County for 23 years. I am the Interim Principal Auditor-Appraiser with the County of Alameda Assessor. My responsibilities include to plan, coordinate and direct the work of the Business Personal Property Section of the County Assessor's Office, and to assume primary responsibility for the personal property assessment, fixture assessment and audit program of the County Assessor's Office.
3. The Assessor is required to annually assess taxable business personal property for property tax purposes based upon its value on the "lien date" of January 1st of each year. Business Personal Property includes all equipment out on lease, rent, or conditional sale to others used in the operation of a business. Business Personal Property is reported to

1 the Assessor annually on a statewide standardized form Business Property Statement
2 (Form 571-L).

3 4. When valuing property for property tax purposes, county assessors follow guidance from
4 the California State Board of Equalization that is a state constitutional agency overseeing
5 the work of the county assessors for the 58 counties in California. The California State
6 Board of Equalization is statutorily authorized to direct and guide county assessors in
7 performing their work assessing property. The direction and guidance takes many forms,
8 including a series of publications referred to as the "Assessor's Handbook."

9 5. To value property, there are generally 3 main methods to value property: 1. The Cost
10 Approach. 2. The Income Approach. 3. The Sales Comparison Approach. The Cost
11 Approach to value is the California State Board of Equalization's recommended method
12 to value personal property and fixtures in California. This method estimates the value of
13 an asset by taking the asset's historical purchase price adjusts it to changes in value since
14 the purchase and/or installation. In application, the Assessor starts with the asset's
15 original cost, applies an inflationary index to account for price level changes, and then
16 applies a depreciation factor to account for the asset's usage based on the age of the asset.
17 This is an acceptable and preferred method in valuing personal property in California.

18 6. I am familiar with the tax records maintained by the Assessor in the normal course of
19 business and specifically with information requested by the Assessor or furnished in the
20 Business Property Statement. Pursuant to Revenue and Taxation Code Section 451, the
21 Assessor is required to keep the information in the Business Property Statement secret,
22 and therefore, cannot disclose any details or produce a copy of the statement, other than
23 to indicate whether the Business Property Statement was filed.

24 7. In Alameda County, California, the Assessor's Office has 2 Bed Bath and Beyond
25 Stores as of January 1, 2023. The first store, 590 2nd St. Oakland, CA is located in the
26 Jack London District of Oakland (Store 26). For January 1, 2023, Bed Bath and Beyond
27 reported on its Business Property Statement the cost of Equipment, Furniture, & Fixtures
28

1 for this store. After segregating similar equipment, the Alameda County Assessor's
2 Office applied California State Board of Equalization approved depreciation factors on
3 various equipment categories to arrive at a value of \$165,412.

4 8. For the 2nd store in Alameda County, this store is located at 4882 Dublin Blvd, Dublin
5 (Store 173). This store is in a popular suburban shopping mall. As of January 1, 2023,
6 Bed Bath and Beyond reported on its Business Property Statement the cost of Equipment,
7 Furniture, & Fixtures for this store. After segregating similar equipment, the Alameda
8 County Assessor's Office applied California State Board of Equalization approved
9 depreciation factors on various equipment categories to arrive at a value of 262,989.

10 9. I reviewed the declaration submitted by Debtors in their Second Omnibus Objection. Mr.
11 John W. Lammert of Assessment Technologies, Bed Bath & Beyond's appraiser, relies
12 on the Sales Comparison Approach in arriving at market value. Mr. Lammert supposedly
13 used Bed Bath & Beyond's own sale of fixtures and personal property from their store
14 closures as a basis to arrive at value. This method is contrary to California State Board of
15 Equalization's standard when valuing personal property and fixtures.

16 10. In Assessor's Handbook 504, page 50, "[The Cost Approach] is the method of valuation
17 used most frequently to value personal property and business fixtures for assessment
18 purposes because it lends itself to mass appraisal and is employed based on information
19 provided on the yearly property statements." Further on page 50, the handbook confirms
20 the Cost Approach by stating: "Use of the cost approach is preferred if the following
21 condition exist: (1) no reliable sales data are available, (2) no reliable income data are
22 available for property being valued, and (3) the income of the property being valued is
23 not so regulated as to make current replacement costs irrelevant to value." No reliable
24 sales data has been made available to the Assessor.

25 11. The store closure sales do not meet the definition of a reliable sale according to "Property
26 Tax Rule 2," contained within the Board of Equalization's regulations at Title 18 of the
27 California Code of Regulations, which states:
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1 In addition to the meaning ascribed to them in the Revenue
2 and Taxation Code, the words "full value", "full cash
3 value", "cash value", "actual value", and "fair market
4 value" mean the price at which a property, if exposed for
5 sale in the open market with a reasonable time for the seller
6 to find a purchaser, would transfer for cash or its equivalent
7 under prevailing market conditions between parties who
8 have knowledge of the uses to which the property may be
9 put, both seeking to maximize their gains and neither being
10 in a position to take advantage of the exigencies of the
11 other.

12 12. The nature of Bed Bath & Beyond's store closures and accompanying sales data are
13 considered a distressed sale and therefore are not reliable. Bed Bath & Beyond is not
14 taking the time to maximize their gains and investment in the property being sold;
15 instead, these items are being liquidated at below market value prices to encourage a
16 quick sale in order to close down the stores. This concept is further explained in
17 Assessor's Handbook 504 page 130 "Sales of assets from a bankruptcy estate should not
18 necessarily be considered valid indicators of market value under the definition of
19 Revenue and Taxation code section 110. The buyer of property from a bankrupt's estate
20 has the ability to take advantage of the exigencies of the seller. Frequently, the trustee's
21 desire to liquidate the assets in an abbreviated period of time further impinges on the
22 concept of 'open market transaction.'"

23 13. Even if the court is to consider these sales as acceptable, there is not enough data to
24 support a reliable value conclusion. The sales data being presented do not show similar
25 assets being sold by other retail users. The sale being presented represents sales of only
26 Bed Bath & Beyond and is not reflective of retail personal property and fixtures in
27 general. To be considered reliable, you would need a data set that represents all retail
28 stores and users of retail equipment. The likely reason for this omission is because retail
personal property and fixtures are rarely sold in the open market (other than in a
liquidation setting). This is one of the reasons in Assessor's Handbook 504, at page 83,
the Board of Equalization cautions the Sales Comparison approach in its use in valuing
personal property and fixtures:

1 The comparative sales approach is limited in its application
2 to personal property and business fixtures, and is used less
3 often than is the cost approach to value, because (1) most
4 types of personal property and business fixtures are resold
5 infrequently (limited sales data are available), (2) sales
6 data, when available, are generally limited by
7 comparability, and (3) in many cases, personal property and
8 business fixtures are not sold without affecting other
9 property (whether real or personal property). This approach
10 is, however, applicable to personal property and business
11 fixtures that are frequently exchanged in the market when
12 their exchange does not affect other items, such as
13 agricultural and construction equipment, boats, and
14 airplanes. Sales comparables would usually not be good
15 indicators of value for other types of property that require
16 extensive testing or considerable installation costs.

17 14. As mentioned in the Assessor's Handbook, personal property which are frequently sold
18 such as agricultural and construction equipment, boats, and aircraft would be acceptable
19 types of equipment to undergo a Comparable Sales Approach valuation analysis. These
20 are not the type of equipment Bed Bath & Beyond possesses and would not be applicable
21 to them. Bed Bath & Beyond stores, however, incur significant cost to install store
22 shelving, fixtures, and other equipment to make the store appealing to consumer
23 shoppers. As a result, the Assessor's Handbook reiterates the point that the Sales
24 Comparable would not be good indicators of value and not the appropriate valuation
25 choice.

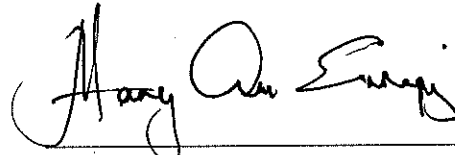
26 15. The valuation analysis suggested by Bed Bath & Beyond produces a value of only
27 \$10,821 and \$11,167 which represents less than 10% of the already heavily-depreciated
28 value on the tax roll. This is far below fair market value for an operational retail store. It
would not be in good appraisal judgement to accept Bed Bath & Beyond's valuation
methodology as it is against California standards set by the California State Board of
Equalization. Furthermore, the Cost Approach as applied by the Alameda County
Assessor's Office is the appropriate method to use. The valuation of Bed Bath &
Beyond's stores has been verified by the appraisal staff in Alameda County and has been
attested to be Fair Market Value in accordance with California laws.

1 16. A valuation hearing in New Jersey would be very burdensome on the Assessor. Assessor
2 staff is located exclusively in the County of Alameda within the State of California.
3 Assessor staff only appear in administrative proceedings before the Assessment Appeals
4 Board, which are not formal court proceedings.

5 17. Uniformity of Assessment is of the utmost importance to the Assessor and required under
6 the California Constitution. This uniformity will be placed at risk should an out of state
7 court, rather than our local Assessment Appeals Board, make a valuation determination at
8 a hearing without the Assessor present, and based on valuation methods that are not
9 accepted under the Revenue and Taxation Code.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this 13 day of October 2023, at Oakland, California.

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16 Mary Ann Enriquez
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